FILED
NOV 10 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(31) (27)

Nos. 99-5 and 99-29

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ANTONIO J. MORRISON, ET AL.

CHRISTY BRZONKALA, PETITIONER

v.

ANTONIO J. MORRISON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: JUNE 25, 1999
CERTIORARI GRANTED: SEPTEMBER 28, 1999

48 pp

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DOCKET No. 96-1814

BRZONKALA, ET AL., PLAINTIFF-APPELLEE

v.

VPI STATE UNIVERSITY, ET AL., DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
1996	
	* * * * *
6/11/96	Civil case docketed.
	* * * * *
9/16/96	Amended notice of appeal filed in the District Court on 9/13/96.
	* * * * *
9/24/96	CLERK ORDER FILED consolidating case 96-2316 with 96-1814.
	* * * * *

DATE	PROCEEDINGS
11/18/96	Brief and joint appendix filed by Appellant Christy Brzonkala in 96-1814.
11/18/96	Brief filed by Appellant/intervenor US in 96-2316.
	* * * * *
12/20/96	Brief filed by Appellee VPI State Univ in 96-1814.
12/23/96	Brief filed by Appellee Antonio J. Morrison in 96-1814, Appellee James Landale Crawford in 96-1814, Appellee Antonio J. Morrison in 96-2316, Appellee James Landale Crawford in 96-2316.
	* * * * *
1997	
	* * * * *
1/8/97	Reply brief filed by Appellant US in 96-2316.
1/8/97	Reply brief filed by Appellant Christy Brzonkala.
	* * * * *
6/4/97	Oral argument heard.

DATE	PROCEEDINGS
	* * * * *
12/23/97	Published, authored opinion filed.
12/23/97	Judgment order filed. Decision: Reversed and Remanded. DISSENT.
1998	
	* * * * *
1/20/98	Petition filed by Appellee VPI State Univ in 96-1814 for rehearing.
	* * * * *
2/4/98	Petition filed by Appellee Antonio J. Morrison in 96-1814, Appellee James Landale Crawford in 96-1814, Appellee Antonio J. Morrison in 96-2316, Appellee James Landale Crawford in 96-2316 for rehearing.
2/5/98	COURT ORDER filed granting rehearing in banc.
2/5/98	Case reopened.
	* * * * *
2/20/98	Supplemental intervenor brief filed by United States.

DATE	PROCEEDINGS
2/23/98	Supplemental brief filed by Appellant Christy Brzonkala in 96-1814.
2/23/98	Supplemental brief filed by Appellee Antonio J. Morrison in 96-1814, Appellee James Landale Crawford in 96-1814, Appellee Antonio J. Morrison in 96-2316, Appellee James Landale Crawford in 96-2316.
2/24/98	Supplemental brief filed by Appellee VPI State Univ in 96-1814.
3/3/98	Oral argument heard in banc before JHW, HEW, FDM, SJE, WWW, PVN, CHH, JML, KJW, MBM, DGM.
	* * * * *
1999	
	* * * * *
3/5/99	Judgment order filed. Decision: Affirmed. Separate concurring and dissenting opinions were written.
	* * * * *
4/27/99	Mandate issued.
	* * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CIVIL ACTION No. 95-1358

CHRISTY BRZONKALA, PLAINTIFF

v.

VIRGINIA POLYTECHNIC AND STATE UNIVERSITY, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
12/27/95	1	COMPLAINT (w/) Attachments; Filing Fee $120.00; Receipt # 73268; Service due 4/25/96 for James Landale Crawford, for Antonio J. Morrison, for VP & SU (eh) [Entry date 12/29/95]
		* * * * *
3/1/96	6	AMENDED COMPLAINT by Christy Brzonkala amending [1-1] complaint against Cornell D. Brown, William E. Landsidle Service due 6/29/96 (rc) [Entry date 03/01/96]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/5/96	19	MOTION to Dismiss Amended Complaint by Antonio J. Morrison (kh) [Entry date 03/05/96]
3/5/96	20	MOTION to Dismiss Plaintiff's Amended Complaint by VP & SU, & William E. Landsidle (Attorney Kay Kurtz Heidbreder) (kh) [Entry date 03/05/96]
		* * * * *
3/11/96	—	MEMORANDUM by Christy Brzonkala in opposition to [20-1] motion to Dismiss Plaintiff's Amended Complaint by VP & SU (eh) [Entry date 03/11/96]
		* * * * *
3/15/96	—	MEMORANDUM by Christy Brozonkala in opposition to [19-1] motion to Dismiss Amended Complaint by Antonio J. Morrison (eh) [Entry date 03/15/96]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/25/96	28	NOTICE to the Court of Intention to Intervene under 28 USC 2403(a) by USA (eh) [Entry date 03/25/96]
		* * * * *
4/1/96	31	MOTION to Dismiss [16-1] Amended Complaint by Cornell D. Brown (kh) [Entry date 04/01/96]
		* * * * *
4/1/96	32	MOTION to Dismiss Amended Complaint by James Landale Crawford (kh) [Entry date 04/01/96]
		* * * * *
4/8/96	—	MEMORANDUM by Christy Brzonkala in opposition to [32-1] motion to Dismiss Amended Complaint by James Landale Crawford (eh) [Entry date 04/08.96]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/19/96	—	MEMORANDUM by Christy Brzonkala in opposition to [31-1] motion to Dismiss [16-1] Amended Complaint by Cornell D. Brown (eh) [Entry date 4/19/96]
	* * * * *	
4/26/96	—	MEMORANDUM by USA in support of the Constitutionality of the civil rights provision of the Violence Against Women Act of 1994 (eh) [Entry date 04/26/96]
	* * * * *	
5/1/96	42	MOTION to Intervene by USA In Order to Defend the Constitutionality of the Civil Rights Provision of the Violence Against Women Act of 1994 (eh) [Entry date 05/01/96]
	* * * * *	
5/6/96	44	ORDER granting [42-1] motion to Intervene by USA (signed by Chief Judge Jackson L. Kiser) (eh) [Entry date 05/06/96]

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
5/7/96	46	MEMORANDUM OPINION (signed by Chief Judge Jackson L. Kiser) (eh) [Entry date 05/08/96]
5/7/96	47	ORDER granting [20-1] motion to Dismiss Plaintiff's Amended Complaint as to Landsidle, granting [3-1] motion to Dismiss (signed by Chief Judge Jackson L. Kiser) (eh) [Entry date 05/08/96]
	* * * * *	
6/3/96	53	MOTION to Voluntarily Dismiss Cornell D. Brown by Christy Brzonkala (eh) [Entry date 06/03/96]
	* * * * *	
6/4/96	55	NOTICE OF APPEAL by Christy Brzonkala. FILING FEE $105.00; RECEIPT # 74699; Order appealed: May 7, 1996 Order by Judge Kiser (jj) [Entry date 06/05/99]
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
6/6/96	—	MEMORANDUM by Cornell D. Brown in opposition to [53-1] motion to Voluntarily Dismiss Cornell D. Brown by Christy Brzonkala (eh) [Entry date 06/07/96]
	* * * * *	
7/26/96	76	MEMORANDUM OPINION (signed by Chief Judge Jackson L. Kiser) (eh) [Entry date 07/29/96]
7/26/96	77	ORDER Dismissing w/prejudice claims against Antonio Morrison and James Crawford, Dismissing w/out prejudice state claims, and Dismissing case from the docket (signed by Chief Judge Jackson L. Kiser) (eh) [Entry date 07/29/96]
7/26/96	—	Case closed (eh) [Entry date 07/29/96]
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
9/13/96	81	AMENDED NOTICE OF APPEAL by Christy Brzonkala. Order appealed: July 26, 1996 Order by Judge Kiser) (jj) [Entry date 09/13/96]
	* * * * *	
9/18/96	82	NOTICE OF APPEAL by USA. Order appealed: July 26, 1996 Order by Judge Kiser (jj) [Entry date 09/18/96]
	* * * * *	

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

Civil Action No. 95-1358-R

CHRISTY BRZONKALA, PLAINTIFF

v.

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY,
AND
ANTONIO J. MORRISON,
JAMES LANDALE CRAWFORD,
CORNELL D. BROWN,
AND
WILLIAM E. LANDSIDLE,
IN HIS CAPACITY AS COMPTROLLER OF
THE COMMONWEALTH, DEFENDANTS

AMENDED COMPLAINT

By leave of this Court pursuant to Federal Rule of Civil Procedure 15(a), plaintiff Christy Brzonkala, by counsel, amends her Complaint filed with this honorable Court on December 27, 1995 for declaratory judgment, injunctive relief and damages for violation of her civil rights under 20 U.S.C. sections 1681-88, also known as Title IX of the Education Amendments of 1972; for violation of her civil rights under 42 U.S.C. section 13981, also known as the Violence Against Women Act of 1994; for common law torts of assault, battery, false

imprisonment and *per se* defamation and for breach of contract under Virginia law.

JURISDICTION

1. Plaintiff invokes this Court's jurisdiction for her federal question claims under 28 U.S.C. section 1331 and under 42 U.S.C. section 13981(e)(3).

2. Plaintiff invokes this Court's jurisdiction over defendants Antonio J. Morrison, James Landale Crawford and Cornell D. Brown for her common law tort claims against them, individually, jointly and severally, under 28 U.S.C. section 1367(a). Plaintiff invokes this Court's jurisdiction over defendant James Landale Crawford under 28 U.S.C. section 1332 on the grounds that he is a citizen of Florida and that her claims against him exceed $50,000.00.

3. Plaintiff invokes this Court's jurisdiction over defendant Virginia Polytechnic Institute and State University for her state-law claim of breach of contract under 28 U.S.C. 1367(a) and under section 2.1-223.1 of the Code of Virginia (1995). Venue in the Roanoke Division is proper under Local Rule 18.

4. Plaintiff filed a charge with the United States Department of Education, Office of Civil Rights, Region III, pursuant to federal regulations governing Title IX; her charge was dismissed with leave to refile pending the outcome of this action. Plaintiff's claim of contract damages against defendant Virginia Polytechnic Institute and State University was formally rejected on October 25, 1995; she has subsequently delivered statutorily required notice of her contract claim to the Comptroller of the Commonwealth by

certified mail. Plaintiff has approved and is participating in a criminal investigation regarding her allegations about events which occurred on or about September 21-22, 1994 by the Virginia State Police. Plaintiff has exhausted her administrative remedies.

5. All counts pleaded herein are timely.

6. During a telephone conference on February 22, 1996, this Court announced that it would decline to stay plaintiff's causes of action against individual defendants, Antonio J. Morrison and James Landale Crawford, during an on-going State Police investigation and plaintiff was urged to amend and to add new parties with dispatch.

PARTIES

7. Plaintiff Christy Brzonkala is a never-married adult female United States citizen and a resident of Fairfax, Virginia. At the times complained about herein, plaintiff was a student at Virginia Polytechnic Institute and State University ("Virginia Tech") and was a beneficiary of Title IX of the Education Amendments of 1972. Prior to her arrival at Virginia Tech, plaintiff had been recruited by other Division I schools in the National Collegiate Athletic Association ("NCCA") to play basketball. Plaintiff selected Virginia Tech so that she could play her preferred sport, softball. Plaintiff was a "student athlete" and a non-scholarship prospect for Virginia Tech's varsity women's softball team.

8. Defendant Virginia Polytechnic and State University ("Virginia Tech") is a state supported institution of higher education incorporated under section 23-114 *et seq.* of the Code of Virginia (1995) and located in Blackburg, Virginia. Virginia Tech receives federal funds and is an institution covered by Title IX of the Education Amendments of 1972.

9. Defendant Antonio J. Morrison ("Morrison") is an adult unmarried male student of Virginia Tech and at the times complained about herein, he was a member of the school's football team on athletic scholarship. Morrison is a citizen of the Commonwealth of Virginia.

10. Defendant James Landale Crawford ("Crawford") is an adult unmarried male student of Virginia Tech and at the times complained about herein, he was a member of the school's football team on athletic scholarship. Crawford is a citizen of the state of Florida.

11. Defendant Cornell D. Brown ("Brown") is an adult male student of Virginia Tech and at the times complain[ed] about herein, he was a member of the school's football team on athletic scholarship. Brown is a citizen of the Commonwealth of Virginia.

12. Defendant William E. Landsidle is named as a defendant in his capacity as Comptroller of the Commonwealth for the sole purpose of complying with section 2.1-223.1 of the Code of Virginia (1995).

FACTS

13. On the night of September 21-22, 1994, plaintiff was sexually assaulted in a student room on the third floor of her own Virginia Tech dormitory by two men

whose acquaintance she had made in the company of another female student less than a half hour earlier and whose identities she knew only by given names and by their status as football team members. Approximately five months later, plaintiff learned the men were defendants Morrison and Crawford.

14. Plaintiff reported that she was not inebriated at the time of the assaults.

15. After her female companion and Crawford exited the room following fifteen minutes of conversation, Morrison immediately requested intercourse of plaintiff.

16. Plaintiff audibly told Morrison "no" twice.

17. When plaintiff rose to leave, Morrison forced her face-up onto a bed, pushed her down by her shoulders and disrobed her. Plaintiff does not recall crying out.

18. Morrison turned off the room light and forced plaintiff to submit to vaginal intercourse while he pinned her down by her elbows with his hands and pressed his knees against her legs. Plaintiff attempted to push Morrison off.

19. Before plaintiff could recover, Crawford came into the room and exchanged places with Morrison. Crawford forced plaintiff to submit to vaginal intercourse by pinning her down by her arms and placing his knees against her legs.

20. Again before plaintiff could recover, Morrison exchanged places with Crawford and Morrison forced plaintiff to submit to vaginal intercourse a third time.

21. Morrison did not use a condom to accomplish vaginal penetration of the plaintiff. Crawford did not use a condom to accomplish vaginal penetration of the plaintiff.

22. Morrison said to plaintiff at the conclusion of the third intercourse, "You better not have any fucking diseases."

23. After the third assault, Morrison clad only in his underwear followed wordlessly behind plaintiff until she reached her own dormitory suite on the second floor of the same building.

24. No one was awake in her dormitory suite at her arrival. Plaintiff bathed for a three to five hour period.

25. Approximately a month later, plaintiff confided in her roommate that she had been raped but she could not bring herself to provide any details.

26. After the assaults, plaintiff avoided contact with most fellow residents of her dormitory outside of her own room. Plaintiff radically altered her appearance by cutting her long hair.

27. In the weeks immediately following the assaults, plaintiff became depressed, stopped attending classes and attempted to commit suicide. Plaintiff was treated by a licensed psychiatrist at Virginia Tech and received anti-depressant medication.

28. No Virginia Tech employee attempted any more than a cursory inquiry into the source of plaintiff's mental distress.

29. Plaintiff eventually sought a retroactive withdrawal for the 1994/95 academic year.

30. In February 1995, plaintiff recognized Morrison and Crawford as the two men who forced her to submit to intercourse.

31. Prior to plaintiff's identification, Morrison announced publicly in the dormitory's dining hall and in the presence of Virginia Tech student Charlotte Wachter: "I like to get girls drunk and fuck the shit out of them."

32. At the end of April 1995, plaintiff filed a complaint against Morrison and Crawford under Virginia Tech's Sexual Assault Policy which was formally released for dissemination to students on July 1, 1994. See Exhibit A in Original Complaint, pages 26-28 of University Policies for Student Life, 1994-1995. Virginia Tech's judicial procedure is an "educational program or activity" within the plain meaning of Title IX of the Education Amendments of 1972.

33. Plaintiff relied on Virginia Tech officials to prosecute her complaints and, believing her failure to preserve physical evidence foreclosed them, she did not bring criminal charges against Morrison or Crawford.

34. At no time did any Virginia Tech employee urge plaintiff to reconsider her decision not to initiate a formal incident report or to reconsider her grounds for believing criminal charges would be futile.

35. At no time did any Virginia Tech employee report the assaults to Virginia Tech police or to Blackburg police.

36. No incident report was filed with any policing authority.

37. By information and belief, the only violent felony for which Virginia Tech authorities, once on notice that a crime may have been committed, decline to file incident reports either with Virginia Tech Police or with Blackburg Police is sexual assault where a female student has been victimized by a male Virginia Tech student.

38. By information and belief, the only violent felony for which Virginia Tech authorities, once on notice that crime may have been committed, defer to the victim's "wishes" about whether an incident report will be filed with Virginia Tech Police or Blackburg Police is sexual assault where a female student has been victimized by a male Virginia Tech student.

39. Under the Students' Right-to-Know provision of the Campus Security Act, all colleges and universities receiving federal funds are required to make public the number and nature of crimes involving students, both on their premises and off-campus, for which there are incident reports. 34 C.F.R. section 668.47 (final rule, April 29, 1994).

40. According to statistics presented annually in *The Chronicle of Higher Education*, Virginia Tech reported four rapes in 1992 and one rape in 1993.

41. By information and belief, between 1992 and 1993, thirteen rapes have been adjudicated at Virginia Tech through internal procedures with nine resulting in disciplinary action against the accused student.

42. After plaintiff filed her charge under the school's Sexual Assault Policy, she learned that a Virginia Tech student overheard an unidentified male Virginia Tech athlete advise defendant Crawford that he should have "killed the bitch."

43. The first hearing on July 21, 1995 was audio-taped by a Virginia Tech employee.

44. The Virginia Tech employee responsible for conducting the first hearing announced in his opening statement that charges were being brought against Morrison and Crawford under the school's "Abusive Conduct Policy" which included sexual assault.

45. This Court ordered Virginia Tech to turn over "copies" of the surviving audio-tapes to plaintiff's counsel by February 26, 1996.

46. Surviving audio-tapes of the first hearing, produced on February 26, 1996, are not complete. Plaintiff's cross-examination of Morrison and Crawford is missing as is some testimony of plaintiff's witnesses.

47. During the first hearing which lasted three hours, Morrison admitted that sexual contact had taken place between himself and plaintiff where and when she alleged.

48. During the first hearing and under questioning by plaintiff, Morrison admitted that plaintiff told him "No" twice.

49. During the first hearing, Crawford denied any sexual contact with plaintiff and offered Brown, the pair's suite-mate, as his alibi witness. Crawford testified that plaintiff was "really drunk" when she arrived in the room where Crawford confirmed Morrison had sexual contact with her.

50. During the first hearing, Brown testified that he was present in the dormitory suite during the same period in which plaintiff alleged the assaults took place and that he was close enough to the scene to observe the presence of plaintiff and Morrison together in Morrison's room.

51. Defendants Crawford and Brown testified that when Crawford left the presence of plaintiff and Morrison, he went to Brown's room in the same suite and after fifteen minutes, Crawford returned to his room in the company of Brown and entered it while plaintiff was still in the room.

52. During the first hearing, Virginia Tech student Hope Handley ("Handley") testified that she and plaintiff were in the dormitory room with Morrison and Crawford on the date and at the time plaintiff alleged

and that Handley had left first. Handley's testimony was also lost on produced audio-tapes.

53. The Virginia Tech judicial committee found insufficient evidence to take action against Crawford.

54. The Virginia Tech judicial committee found Morrison guilty of sexual assault and handed down punishment of immediate suspension from the school for two semesters.

55. In May 1995 Morrison appealed the Virginia Tech judicial committee's sanction. The sanction was upheld. See Exhibit B in Original Complaint, Letter to plaintiff from Cathyrn T. Goree, Ph.D dated May 22, 1995.

56. By the procedural rules set forth in Virginia Tech official publications, the decision of the appeals officer is final.

57. In the first week of July 1995, Virginia Tech officials Donna Lisker ("Lisker") and Cathyrn T. Goree ("Goree") called personally at plaintiff's home in Fairfax, a four hour drive from Blackburg, to advise her that:

(a) Morrison's attorney had threatened to sue the school on due process grounds;

(b) The school had deemed as having merit Morrison's "ex post facto" challenge, i.e., Morrison was charged under the Sexual Assault Policy, not yet spelled out in the Student Handbook;

(c) The school refused to defend in court the judicial panel's decision and the subsequent appeal decision; and

(d) A re-hearing under the Abusive Conduct Policy which pre-dated the Sexual Assault Policy was required.

58. To induce plaintiff's agreement to participate in a second hearing, Lisker and Goree assured plaintiff that plaintiff's story was believed by Virginia Tech officials and that the second hearing was a mere technicality to cure the school's error in bringing the original complaint under a policy not yet widely disseminated to students, namely the Sexual Assault Policy.

59. Counsel representing Virginia Tech, as members of the Office of the Attorney General, were on actual notice before 1995 that the due process arguments which defendant Morrison alleged were groundless under Virginia law. In particular Morrison's "ex post facto" challenge of the conduct provisions in the Student Handbook had already been judicially tested in a Virginia court by a college also represented by the Office of the Attorney General and the court found as a matter of law that a cause of action would not lie under any legal theory. See Exhibit 1, Letter Opinion, *Abrams v. Mary Washington College, et al.*, Circuit Court of the City of Fredericksburg, #CH93-193 (April 27, 1994) at 4.

60. Plaintiff was required to engage her own legal counsel at her own expense and she submitted to a second hearing by the Virginia Tech judicial committee

on July 21, 1995. See Exhibit C in Original Complaint, Letter to plaintiff from Gerard J. Kowalski and Joyce Williams-Green, dated August 4, 1995.

61. The second hearing was *de novo* and lasted seven hours. The second hearing was also audio-recorded and "copies" of surviving tapes were ordered by the Court to be turned over to plaintiff's counsel on February 26, 1996 under a protective order.

62. Preceding the second hearing, plaintiff and her attorney Harriet Dorsey of Blackburg, Virginia, were categorically denied access to the audio-tape recordings and other records of the first hearing while Morrison and his attorney, W. David Paxton of Roanoke, Virginia, were granted complete and early access.

63. Preceding the second hearing, plaintiff and her attorney were informed by Virginia Tech officials that all student testimony given in the first hearing would be accepted only by sworn affidavit. Notice was not sufficient to plaintiff to secure such documents from her witnesses who were away from school on summer break. Notice was sufficient to Morrison to procure sworn affidavits from his student witnesses including Crawford whose affidavit renewed his denials of sexual contact with plaintiff.

64. Plaintiff was forced to present a summary of her student witnesses' testimony through the testimony of Virginia Tech employee Lisker.

65. Preceding the second hearing, plaintiff was admonished by Virginia Tech officials through Lisker to avoid all mention of Crawford in her own testimony

because he had been dismissed from the process. Plaintiff was forced to give a truncated version of events in order to comply with Virginia Tech's demands. Crawford was present in the adjacent room during most of the second hearing.

66. Plaintiff and her attorney received no notice, written or oral, that the nature and particulars of the charge against Morrison were any different in the second hearing than in the first. Virginia Tech officials affirmed as late as December 5, 1995, that the charge against Morrison in the second hearing was "sexual assault." See Exhibit A, Plaintiff's Supplemental Memorandum in Opposition to Defendant Virginia Tech's Motion to Dismiss ("Plaintiff's Supplemental Memorandum"), "Dear Faculty, Staff, and Students" Memorandum by Peggy S. Meszaros, dated December 5, 1995 at paragraph 4.

67. The Virginia Tech judicial committee found Morrison guilty of abusive conduct and the sanction of an immediate two-semester suspension of Morrison was reimposed.

68. Morrison appealed the result of the second hearing. Without notice to plaintiff, the sanction against Morrison was set aside. See Exhibit D in Original Complaint, Letter to Mr. Antonio J. Morrison from Peggy S. Meszaros, Senior Vice-President and Provost, dated August 21, 1995.

69. On August 22, 1995, plaintiff learned for the first time from an article in *The Washington Post* that Morrison would return to the Virginia Tech campus for the Fall, 1995 semester. Upon information and belief,

Morrison returned to Virginia Tech on a full athletic scholarship.

70. After a syndicated newspaper article written by David Teel of the Newport News, Virginia *Daily Press* was published on November 30, 1995, plaintiff learned for the first time that the second judicial decision had actually found Morrison guilty of a reduced charge of "using abusive language." See Exhibit A, Plaintiff's Supplemental Memorandum, "Dear Faculty, Staff, and Students" Memorandum by Peggy S. Meszaros, dated December 5, 1995 at paragraph 6.

71. Upon information and belief, Head Football Coach Frank Beamer, through his subordinates, his agents and/or his representatives, participated directly and indirectly in the process by which the sanction against Morrison was overturned.

72. By information and belief, Virginia Tech officials coordinated a plan as early as May 1995 whereby Morrison would be allowed to rejoin the all-male football team for the beginning of the 1995 season.

73. By information and belief, Virginia Tech employees coordinated a plan as early as March 1995 whereby Brown's role in plaintiff's allegations would be obscured.

74. Solely because he is a member of Virginia Tech's all-male football team, Morrison was accorded affirmative advantages in the second hearing which were not accorded to plaintiff, who is a female.

75. Plaintiff was repeatedly and intentionally placed by Virginia Tech officials at a material disadvantage during the second hearing process because she is a female and because she is a victim of a specific type of sexual assault which, under Virginia common law, can only be alleged by a female against a male.

76. Because Morrison would be present on the Virginia Tech campus during the Fall, 1995 semester and because officials of Virginia Tech had repudiated her claim that Morrison had raped her before numerous students and athletes who were aware of the facts, plaintiff feared for her personal safety and canceled her plan to return to Virginia Tech for the Fall, 1995 semester. See paragraph 42 above. Plaintiff did not attend any other college or university during the Fall, 1995 term.

77. While Virginia Tech spontaneously refunded to plaintiff's parents her tuition for academic year 1994/95, no refund was offered for any other expenses plaintiff's family incurred including room, board, books and fees, or travel, telephone and legal expenses generated by the second hearing.

78. Plaintiff has suffered humiliation and embarrassment as a result of the second hearing and subsequent setting aside of the sanction against Morrison.

79. As a direct result of the unprotected sexual contact forced upon her on September 21-22, 1994, plaintiff has suffered and continues to suffer and will suffer in the future severe emotional distress for which she has received treatment from a licensed health care provider.

80. Morrison, through his attorney, has repeatedly published during 1995 and 1996 that plaintiff engaged in consensual intercourse with him.

81. Consensual intercourse between two persons who are not married to each other constitutes a crime called fornication, section 18.2-344 of the Code of Virginia (1995).

82. Morrison, through his attorney, has repeatedly published the allegation that plaintiff committed fornication under Virginia law with full knowledge that the statement-as-fact that plaintiff consented to sexual intercourse with him is false.

83. Morrison's statements through his attorney are motivated by express malice against plaintiff, who until November 30, 1995 was a private person.

84. Since December 5, 1995, through its spokesperson Larry Hincker, Virginia Tech has released to the media selected bits of testimony from the recorded testimony of both contested hearings while at the same time denying plaintiff and her present counsel access to such testimony.

FIRST CAUSE OF ACTION
VIOLATION OF RIGHTS UNDER TITLE IX–
DISPARATE TREATMENT GENDER
DISCRIMINATION–
AGAINST DEFENDANT VIRGINIA TECH

85. Plaintiff realleges paragraphs 1-84 above and incorporates them herein.

86. Defendant Virginia Tech treated plaintiff, as a female, differently from May 23, 1995 to August 22, 1995 than a similarly situated male student:

(a) Plaintiff and Morrison were both first year students at Virginia Tech in 1994/95;

(b) Plaintiff and Morrison resided in the same dormitory during 1994/95;

(c) Plaintiff and Morrison were both regarded as student athletes during 1994/95;

(d) Solely because he is a member of the school's all-male football team, Morrison received preferential treatment to the material detriment of plaintiff's education when:

(1) Virginia Tech intentionally violated its own rules which rendered the decision of an appeals officer final in judicial procedures;

(2) Virginia Tech intentionally induced plaintiff to agree to a second hearing on grounds which it knew were without merit;

(3) Virginia Tech intentionally hindered plaintiff's preparation for and participation in the second hearing by:

(A) giving her and her attorney shorter notice of the hearing date than the male and his attorney;

(B) giving the male and his attorney access to preparation materials to which she and her attorney were categorically denied;

(C) giving the male and his attorney earlier notice for the requirement for sworn affidavits than she received;

(D) requiring plaintiff to put forth evidence through hearsay-upon-hearsay testimony of a Virginia Tech employee while not requiring the male to do likewise;

(E) placing material limitations on plaintiff's testimony when no comparable limitations were placed on the male's testimony;

(F) failing to advise plaintiff and her attorney that other charges than "sexual assault" were at issue in the second hearing for which plaintiff bore the burden of proof and about which the male and his attorney were on advance notice;

(G) failing to meet Virginia Tech's obligations to plaintiff under the Family Education Right to Privacy Act ("FERPA," also known as the Buckley Amendment) to notify her of the outcome while at the same time, the school went to significant lengths to protect the male's FERPA rights.

(4) Since December 5, 1995 and in direct violation of FERPA's prohibition against a "pattern and practice" of revealing educational records without a student's written consent, Virginia Tech intentionally and repeatedly released to the media selected details of the two hearings, the records to which plaintiff and her present counsel laid claim as plaintiff's "educational records" and to which plaintiff and present counsel were denied access under their requests pursuant to Virginia's Freedom of Information Act and Virginia's Privacy Protection Act. These selected revelations were motivated by a malicious intent to bolster the credibility of the male student's denials and to attack the credibility of plaintiff's version of the facts even though Virginia Tech officials had found in favor of plaintiff's credibility in three separate fact-finding proceedings.

87. Plaintiff's education was materially diminished by the intentional discrimination against her by Virginia Tech.

88. Plaintiff suffered humiliation and embarrassment when it became known among student athletes that Morrison had been reinstated on full scholarship after the second hearing.

89. Plaintiff incurred actual losses in legal fees, travel expenses, long distance telephone charges and for medical attention in preparation for the second hearing.

SECOND CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS UNDER TITLE IX – DISPARATE IMPACT GENDER DISCRIMINATION – AGAINST DEFENDANT VIRGINIA TECH

90. Plaintiff realleges paragraphs 1-89 and incorporates them herein.

91. Defendant Virginia Tech's policy of allowing the victim to decide whether an incident report will be filed with Virginia Tech Police or with Blacksburg Police constitutes disparate impact gender discrimination against female Virginia Tech students, including plaintiff, which is forbidden by Title IX of the Education Amendments of 1972 because:

(a) Virginia Tech automatically files incident reports of violent felonious crime regardless of the victim's preferences in every other type of crime except where a female student has been sexually victimized by a male Virginia Tech student;

(b) Virginia Tech automatically complies with obligations imposed by federal law, namely the Students' Right to Know Act, for all categories of crime except where a female student has been sexually victimized by a male Virginia Tech student;

(c) Virginia Tech encourages student confidence in the Blacksburg criminal justice system for all categories of criminal victimization except where a female student has been sexually victimized by a male Virginia Tech student;

(d) Virginia Tech accurately educates students with respect to their rights under Virginia law in all situations except where a female student has been sexually victimized by a male Virginia Tech student;

(e) Different treatment of female students' complaints of criminal sexual assault proximately causes a community attitude trivializing sexual assault and discouraging reporting;

(f) Low reporting of sexual assault proximately causes actual and perceived increases in an atmosphere of danger for females and thus, diminishes their educational experience below reasonable expectations of similarly situated male students.

92. Plaintiff, as a female Virginia Tech student, suffered diminishment of her education as a direct result of the school's gender discriminatory crime reporting policy and her criminal claims against Morrison and Crawford were unfairly compromised by delay of investigation to the advantage of two male Virginia Tech students.

THIRD CAUSE OF ACTION
BREACH OF CONTRACT AGAINST
DEFENDANT VIRGINIA TECH

93. Plaintiff realleges paragraph 1-92 and incorporates them herein.

94. Plaintiff and defendant Virginia Tech were parties to a bona fide contract, offered and accepted, containing certain bargained for provisions designed to regulate student life while plaintiff was in residence at Virginia Tech. The terms of this contract are memorialized in a publication called *University Policies for Student Life, 1994-95*, revised July 1, 1994, and explained in other official Virginia Tech documents including a publication called *A Practical Guide to the Virginia Tech Judicial System*, issued through the Division of Student Affairs. *Ross* v. *Creighton University*, 957 F.2d 410, 417 (7th Cir. 1992) (Student Handbook and policies create enforceable contract).

95. At page 6, *A Practical Guide to the Virginia Tech Judicial System* states without equivocation that an "Appeal Officer's decision is final."

96. Plaintiff detrimentally relied on the identifiable contract and the identifiable contractual promise of finality for the appeal officer's decision in the first hearing.

97. Virginia Tech induced plaintiff by intentional and over-reaching misrepresentations to accept a breach of the terms of her express contract, including false and misleading communications that:

(a) Morrison's challenge of the first hearing was legally credible;

(b) Virginia Tech officials continued to believe plaintiff's story and wished only to cure the school's own error in the record; and

(c) Charges against Morrison in the second hearing would be the same as in the first; and

(d) Virginia Tech was unwilling to defend the decision of the first hearing in court under any circumstances because it feared the school might not prevail.

98. Virginia Tech as the drafter of the contract document bears a heightened responsibility to avoid over-reaching. The vast authority of Virginia Tech over a student's affairs likewise requires the school to forbear over-reaching.

99. Under Virginia law, the terms of the contract must be construed against the drafter, Virginia Tech, and in plaintiff's favor.

100. As a result of Virginia Tech's breach of contract, plaintiff has suffered actual losses arising from the second hearing, including legal fees, travel expenses, long distance telephone charges and medical attention associated with her physical distress in returning to Blacksburg and undergoing a seven hour hearing with virtually no breaks.

101. Virginia Tech, by over-reaching and deliberate misrepresentation, failed to honor an identifiable contractual promise contained in an identifiable contract and thus, is liable for plaintiff's actual losses resulting from its breach of contract.

DAMAGES DEMANDED FROM VIRGINIA TECH

102. WHEREFORE, plaintiff demands from Defendant Virginia Tech on all Counts:

(a) Declaratory judgment that the second hearing and appeal are null and void;

(b) An injunction forbidding Virginia Tech from prosecuting internally any future complaint of sexual assault rising to a felony for which it has not prepared and filed an incident report according to state and/or federal law;

(c) An injunction directing Virginia Tech officials to comply with the letter and the spirit of the Campus Security Act of 1990, namely, the reporting provisions of the Students' Right to Know Act;

(d) An injunction directing Virginia Tech officials to begin a one-year review by a presidentially appointed "Blue Ribbon" Task Force of students, faculty, alumni and concerned citizens, of its Sexual Assault Policy and accompanying procedures in the light of the Governor's Task Force on Substance Abuse and Sexual Assault on Campus (1992) and in the light of the Sexual Assault Victims' Bill of Rights in the amended Campus Security Act, P.L. 102-325 (1992), and to publish a report of their

findings and recommendations in the *Collegiate Times*, Virginia Tech's student newspaper, during orientation week for academic year 1997/98;

(e) An injunction directing Virginia Tech to provide at least five hours of mandatory sexual assault awareness education to all students athletes in their first month of residence on Virginia Tech's campus and to bring nationally recognized speakers on sexual harassment and sexual assault issues to its university forum at least twice a year until academic year 2000/2001;

(f) An award of such compensatory damages for loss of education, expenses arising from the second hearing, medical and psychological treatment past and future, humiliation and embarrassment, loss of earnings due to delayed graduation as may be proven at trial and pre-judgment interest dating from May 22, 1995;

(g) Such punitive damages for her federal claims as a jury may award and this Court may approve;

(h) Reasonable attorneys fees and non-taxable costs for her federal claims under 42 U.S.C. section 1988;

(i) Taxable costs of this action; and

(j) Such other relief as this Court may deem proper.

FOURTH CAUSE OF ACTION
VIOLATION OF CIVIL RIGHTS
UNDER VIOLENCE AGAINST WOMEN ACT OF 1994
AGAINST DEFENDANTS MORRISON,
CRAWFORD & BROWN

103. Plaintiff realleges paragraphs 1-102 and incorporates them herein.

104. Morrison twice forced sexual intercourse upon plaintiff, who is not his spouse, against plaintiff's will, by force, threat and intimidation and through the use of plaintiff's mental incapacity and physical helplessness in violation of Section 18.2-61 of the Code of Virginia (1994) which defines such acts as felonies.

105. Morrison twice forced physical contact upon plaintiff of a nature intended to create sexual arousal and he accomplished this contact by force and intimidation in violation of Section 18.2-67.3(A)(2)(b) of the Code of Virginia (1994) which defines such acts as felonies.

106. Crawford forced sexual intercourse upon plaintiff, who is not his spouse, against plaintiff's will, by force, threat and intimidation and through the use of plaintiff's mental incapacity and physical helplessness in violation of Section 18.2-61 of the Code of Virginia (1994) which defines such act as a felony.

107. Crawford forced physical contact upon plaintiff of a nature intended to create sexual arousal and he accomplished this contact by force and intimidation in violation of Section 18.2-67.3(A)(2) of the Code of Virginia (1994) which defines such acts as felonies.

108. By his admitted physical presence at the place, date and time upon which plaintiff alleges she was raped repeatedly and subjected to aggravated sexual battery, and by his failure to intervene to prevent a crime, Brown was a principal in the second degree, within the meaning of Section 18.2-18 of the Code of Virginia (1994), to the felonies committed by Morrison and Crawford against the plaintiff. By information and belief, Brown offered aid and encouragement to Morrison and Crawford during the commission of a crime and his acts manifest a discriminatory animus toward plaintiff's gender.

109. Defendants Morrison, Crawford and Brown conspired, confederated and combined with each other, within this Commonwealth, to commit felonies described in paragraphs 104-108 above in violation of Section 18.2-22 of the Code of Virginia (1994) which defines such conspiracy as a felony.

110. Under Section 18.2-67.6 of the Code of Virginia (1994), plaintiff was not required to cry out or to physically resist Morrison and Crawford in order to bring forth allegations of felonious rape.

111. The violent acts against the plaintiff described in paragraphs 104-108 above were motivated wholly by discriminatory animus toward her gender and were not random acts of violence. See paragraph 31 above.

112. Failure to use a condom by Morrison to accomplish vaginal penetration of plaintiff manifests further Morrison's willful, wanton and reckless disregard for plaintiff's safety and constitutes extreme and outrageous behavior which shocks the conscience of

reasonable persons and manifests a discriminatory animus toward plaintiff's gender.

113. Failure to use a condom by Crawford to accomplish vaginal penetration of plaintiff manifests further Crawford's willful, wanton and reckless disregard for plaintiff's safety and constitutes extreme and outrageous behavior which shocks the conscience of reasonable persons and manifests a discriminatory animus toward plaintiff's gender.

114. As a direct result of the acts of Morrison, Crawford and Brown, plaintiff suffered, now suffers and will continue to suffer physical and psychological injuries and severe emotional distress for which she has sought treatment from a licensed health care provider.

DAMAGES DEMANDED UNDER FEDERAL LAW AGAINST DEFENDANTS MORRISON, CRAWFORD & BROWN

115. WHEREFORE, plaintiff demands of defendants Morrison, Crawford and Brown, jointly and severally, under 42 U.S.C. Section 13981 (Pub. L. 103-322, Title IV, Section 40302, Sept. 13, 1994, 108 Stat. 1941):

(a) Such compensatory damages as may be proven at trial and pre-judgment interest dating from September 22, 1994;

(b) Such punitive damages as a jury may award and this Court may approve;

(c) Reasonable attorneys fees and non-taxable costs of this action under 42 U.S.C. section 1988;

(d) Taxable costs of this action; and

(e) Such other relief as this Court may deem proper.

FIFTH CAUSE OF ACTION
COMMON LAW ASSAULT AND BATTERY
AGAINST DEFENDANTS MORRISON & CRAWFORD

116. Plaintiff realleges paragraph 1-115 and incorporates them herein.

117. Defendant Morrison forced a touching of plaintiff's person which was offensive to plaintiff and would be offensive to a reasonable person in similar circumstances.

118. Morrison accomplished offensive touching of plaintiff's person without her concent.

119. Morrison placed plaintiff in fear of imminent offensive touching without her consent.

120. Plaintiff suffered damages as a direct result of Morrison's offensive touching of her including humiliation, embarrassment, severe emotional distress, anxiety, depression, medical and psychological expenses, travel expenses and loss of earning capacity and she will continue to suffer these damages in the future.

121. Defendant Crawford forced a touching of plaintiff's person which was offensive to plaintiff and would be offensive to a reasonable person in similar circumstances.

121. [*sic*] Crawford accomplished offensive touching of plaintiff's person without her consent.

122. Crawford placed plaintiff in fear of imminent offensive touching without her consent.

123. Plaintiff has suffered, suffers now and will continue to suffer in the future damages as a direct result of defendant Crawford's offensive touching of her including humiliation, embarrassment, severe emotional distress, anxiety, depression, medical and psychological expenses, travel expenses and loss of earning capacity.

124. Morrison and Crawford combined, conspired, aided and abetted each other in the accomplishment of their separate offensive touchings of plaintiff.

125. Morrison and Crawford are jointly and severally liable for plaintiff's damages.

SIXTH CAUSE OF ACTION COMMON LAW FALSE IMPRISONMENT AGAINST DEFENDANTS MORRISON, CRAWFORD & BROWN

126. Plaintiff realleges paragraphs 1-125 and incorporates them herein.

127. Morrison confined plaintiff to a closed space with her awareness but without her consent.

128. Crawford confined plaintiff to a closed space with her awareness but without her consent.

129. Morrison, Crawford and Brown conspired and combined, aided and abetted each other in the act of confining plaintiff to a closed space without her consent.

130. Morrison, Crawford and Brown are jointly and severally liable for damages caused to plaintiff as a result of false imprisonment.

131. As a direct result of the false imprisonment inflicted by defendants Morrison, Crawford and Brown, plaintiff has suffered, now suffers and will continue to suffer in the future damages from physical injury to her person, humiliation, embarrassment, severe emotional distress, anxiety, depression, medical and psychological expenses, travel expenses, and loss of earning capacity.

DAMAGES DEMANDED UNDER COMMON LAW AGAINST DEFENDANTS MORRISON, CRAWFORD & BROWN

132. WHEREFORE, plaintiff demands of defendants Morrison, Crawford and Brown, jointly and severally, for her common law tort injuries:

(a) Such compensatory damages as shall be proven at trial plus pre-judgment interest dating from September 22, 1994;

(b) Such punitive damages as the jury may award and the Court may approve; and

(c) Such other relief as may be deemed just and proper.

SEVENTH CAUSE OF ACTION
PER SE DEFAMATION
AGAINST DEFENDANT MORRISON

133. Plaintiff realleges paragraphs 1-132 and incorporates them herein.

134. In the Commonwealth of Virginia, sexual intercourse between two persons who are not married to each is deemed "fornication" which is a crime of moral turpitude in Virginia. Sections 18.2-344 and 18.2-9(2)(d) of the Code of Virginia (1995).

135. After March 2, 1995, defendant Morrison told Virginia Tech employees that plaintiff engaged in consensual sexual intercourse with him, an act which is a crime of moral turpitude in Virginia.

136. As recently as February 18, 1996, defendant Morrison, through his attorney, published to persons outside any relevant sphere of privilege, absolute or qualified, that plaintiff engaged in consensual sexual intercourse with Morrison, an act which is a crime of moral turpitude in Virginia.

137. The exact words of Morrison, and his attorney, were that sexual intercourse between Morrison and plaintiff was "consensual."

138. Morrison's attorney is his agent. Morrison's attorney published the statement that plaintiff had engaged in "consensual" intercourse with plaintiff with the express authorization and ratification of Morrison.

139. Morrison knew the statement to be false that plaintiff had committed fornication. Morrison's attorney, acting as his agent, knew the statement to be false that plaintiff had committed fornication, or with the exercise of reasonable inquiry, should have so known.

140. Morrison, and his attorney acting as his agent, defamed plaintiff out of malice.

141. Neither Morrison or his attorney enjoys any legal privilege to defame plaintiff.

142. Because Morrison volunteered his own guilt in an act of fornication, under the rule of *Zysk* v. *Zysk*, 239 Va. 32, 404 S.E.2d 721 (1990), he is barred from seeking civil redress in Virginia courts for any damages he personally may have suffered as a result of that criminal act.

143. As a direct result of *per se* defamation by Morrison, and his attorney acting as is agent, plaintiff has suffered humiliation, embarrassment and loss of her good name and diminishment of her credibility.

DAMAGES DEMANDED EXCLUSIVELY
AGAINST DEFENDANT MORRISON

144. WHEREFORE, plaintiff demands of Defendant Morrison:

(a) Compensatory damages for the injury to her good name and credibility in the amount of $10,000,000.00 with pre-judgment interest dating from February 19, 1996.

(b) Such punitive damages as the jury may award and the court may approve; and

(c) Such other relief as may be deemed just and proper.

TRIAL BY JURY ON ALL COUNTS IS DEMANDED.

Respectfully submitted,

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By Counsel

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